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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,244	08/18/2003	Stephen John Dyks	F3314(C)	3282

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EXAMINER

MAHAFKEY, KELLY J

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 07/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/643,244

Applicant(s)

DYKS ET AL.

Examiner

Kelly Mahafkey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

Amendments made May 11, 2006 have been entered.

Claims 1-12 are pending.

#### ***Claim Objections***

The previous claim objection of claim 9 has been withdrawn upon further consideration.

#### ***Claim Rejections - 35 USC § 112***

The previous 112 rejection has been withdrawn in light of applicant's amendments.

#### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over OLS (German 3417196 A1) in view of Hui (ed.) (Dairy Science and Technology Handbook). The references and rejection are incorporated herein and as cited in the office action mailed January 11, 2006. The new limitations added are in claims 11 and 12. The new limitations are similar to the limitations of claim 2, except that they encompass a more narrow temperature range of the frozen aerated product when it is extruded into the mold cavities. As stated in the previous office action, Hui teaches that the product could be filled at a temperature as low as -10C depending on the freezer and its extrusion capabilities. Hui teaches that the molds were filled near the initial

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freezing point of the product in order to mold quickly. Refer specifically to pages 251 and 252. It would have been obvious to one skilled in the art at the time the invention was made to fill the frozen aerated product into a mould as disclosed by OLS at a temperature, including within the ranges of  $-5^{\circ}\text{C}$  and  $-15^{\circ}\text{C}$  and  $-7^{\circ}\text{C}$  and  $-11^{\circ}\text{C}$ , in view of Hui. One would have been motivated to do so depending on the specific composition being utilized and the initial freezing point of that composition in order to accomplish a quick and easy mould, thus creating a decreased processing time. Because both references deal with the process of filling molds with expandable products at high speeds, one would have a reasonable expectation of success from the combination.

### ***Response to Arguments***

Applicant's arguments filed May 11, 2006 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "a process wherein two separate cavities are filled before they are brought together") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Note: Applicant claims, "filling two cavities, one on each forming element, with a frozen aerated material, wherein a. *at least one of the cavities* is filled... c. the two cavities are then moved opposite one another and the frozen aerated product in each cavity is

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pressed against the frozen aerated product of the other cavity.” Applicant is referred to OLS, Abstract, Pages 1-6 and claims 1 and 16, which teach simultaneously filling two cavities, one on each forming element, with a frozen aerated material, wherein the two cavities are then moved opposite one another (i.e. after the mold is filled with the product, the mold is fully closed) and the frozen aerated products in each cavity (i.e. the frozen aerated product on each side of the mold) are pressed against one another (i.e. as the mold closes and as the product expands within the mold). It is further noted that because the recited process steps claim of filling *only one* cavity before the two cavities are moved opposite one another, the frozen aerated product in each cavity can be one and the same, as long as the product lies in both cavities (i.e. when the cavities are moved closer together) and is compressed together (i.e. upon the mold closing).

Regarding applicants’ argument that OLS does not teach of a product that is allowed to expand outside its cavity, applicant is referred to the previous office action and OLS, Page 6 paragraph 3. OLS teaches that the product expands within the mold and that the mold is composed of two cavities, which are simultaneously filled and closed together. Thus, when the product is filled into the mold, a portion of the product is filled into each cavity, as the product expands within the mold, the product within one mold cavity expands and fills a portion of the corresponding cavity or the other piece of the mold, and vice versa.

In response to applicant’s arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208

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USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Applicant states in remarks that claims 1-10 have been rejected over OLS alone, however, as stated in the previous office action and as incorporated herein, claims 1-10 were rejected over OLS in view of Hui.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly Mahafkey whose telephone number is (571) 272-2739. The examiner can normally be reached on Monday through Friday 8am-4:30pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Kelly Mahafkey  
Examiner  
Art Unit 1761



**KEITH HENDRICKS**  
**PRIMARY EXAMINER**